IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

AS.No. 491 of 1997()

OS.1151/1991 of I ADDL.SUB COURT,TRIVANDRUM
.....

APPELLANTS/DEFENDANTS:
---

1. THE CORPORATION OF TRIVANDRUM, CORPORATION BUILDINGS, THIRUVANANTHAPURAM, REPRESENTED BY ITS COMMISSIONER

2. THE MAYOR, CORPORATION OF THIRUVANANTHAPURAM CORPORATION BUILDINGS, THIRUVANANTHAPURAM

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.MURALI PURUSHOTHAMAN

RESPONDENTS/PLAINTIFF:

C.UDAYAKUMAR, S/O.CHELLAPPAN, CONTRACTOR, PLAVILAKATHU VEEDU, KALIPPANKULAM, THIRUVANANTHAPURAM

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.T.R.HARIKUMAR
SRI.P.SIVARAJ
SRI.FRANKLIN CHELLATH
SRI.B.S.SWATHY KUMAR
SRI.MANU KAMAL

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 12/2/2007, ALONG WITH AS NO. 492 OF 1997 AS NO.494 OF 1997 AS NO.497 OF 1997 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.3810/1997 IN A.S.NO.491/1997

DISMISSED

12-2-2007 SD/- KURIAN JOSEPH, JUDGE.

SD/- K.T.SANKARAN, JUDGE.

/ TRUE COPY /

KURIAN JOSEPH & K.T.SANKARAN,JJ.

A.S.Nos.491, 492, 494 & 497 of 1997

Dated this the 12th day of February, 2007

JUDGMENT

Kurian Joseph,J.

These appeals are at the instance of the defendants. The plaintiffs are the respondents. The suits were filed claiming damages. Since there is no serious dispute as to the factual position, it is not necessary to reproduce the whole averments or contentions. The suits were instituted claiming damages for the loss alleged to have been suffered by the plaintiffs on account of a fire in the Exhibition ground in connection with the All India Agricultural, Industrial and Arts Exhibition,1988, on 19-9-1988. The stalls, fencing etc. were destroyed and thus the loss. The defendant Corporation contended that it had no liability to compensate for the loss in terms of the contract. The trial court addressed the question regarding liability and found on the basis of evidence that the kitchen attached to the stall was having only a thatched roof. It was contrary to the instruction in Ext.A3. Inflammable materials were used for the kitchen stall. It has also come

out in evidence of DW1 that the fire started from the kitchen and it spread over to the other stalls. Thus it was rightly concluded that if the kitchen stall was erected by using non-inflammable materials as per Ext.A3 instruction it would not have been destroyed by fire and there would not have been any possibility for the fire to spread to other stalls and thus there was culpable negligence. Exts.P6 and P7 are the reports on the extent and approximate damages suffered by the parties and as a matter of fact the defendant/appellant Corporation itself had taken a decision—Ext.B8 dated 31-1-1989 to compensate the loss. The court below on the basis of evidence mainly discussed above and decreed the suits as follows:-

> "The plaintiff in O.S.No.834/91 is allowed to recover a sum of Rs.89,200/- as damages with interest thereon at 12% per annum from 1-2-89 till realisation and proportionate costs from the assets of the defendant-Corporation.
>
> The plaintiff in O.S.1165/91 is allowed to recover a sum of Rs.6,17,460/- with interest thereon at 12% per annum from 1-2-1989 till realisation and proportionate costs from the assets of the defendant-Corporation.
>
> The plaintiff in OS.No.1151/91 is allowed to

> recover a sum of Rs.1,62,200/- with interest thereon at 12% per annum from 1-2-1989 till realisation and proportionate costs from the assets of the first defendant-Corporation.
>
> The plaintiff in O.S.879/91 is allowed to recover a sum of Rs.27,000/- with interest thereon at 12% per annum from 1-2-1989 till realisation and proportionate costs from the assets of second defendant Corporation."

In all the appeals, there is a direction to deposit the principal amount and liberty is also granted to withdraw the same.

2. Sri.Nandakumara Menon, learned counsel appearing for the appellant, though raised several contentions, had to confine emphasis mainly on two aspects, in view of Ext.B8 resolution of the Corporation itself regarding the loss: (1) the decree with regard to interest with effect from 1-2-1989 is patently wrong, unjust and unreasonable; (2) the plaintiff in O.S.No.879/1991 had not in fact suffered any damages.

3. As far as the case of the plaintiff in O.S.No.879/1991 is concerned, the contention is that Exts,B6 and B7 reports had not taken note of the loss suffered by the plaintiff therein. The plaintiff was examined as P.W.4. Ext.A19 is the allotment letter of the stall. There

is no dispute that he had paid the required charges including that of water and electricity. There is also no dispute that the stall was completely gutted by fire. Based on the statement filed by the plaintiff before the Enquiry Commission and marked as Ext.A25, Ext.A26 notice as acknowledged by Ext.A27, were also issued claiming damages. The various bills produced by the plaintiff indicated that the plaintiff had purchased materials worth more than Rs.50,000/-. Though it was difficult to assess the exact extent of damages, taking note of the totality of evidence a rough estimate of Rs.20,000/- was made by the court below as damages in respect of the items available in the stall. Towards the damages caused to the Yezdi Motor Bike, in view of the admission made by DW1, an amount of Rs.7,000/- was fixed as the loss and thus a decree for Rs.27,000/- was passed.

4. Sri.Nandakumara Menon vehemently contended that there was no evidence at all so as to sustain the decree. We are afraid the contentions cannot be appreciated. Even in the written statement, it is admitted that stall No.54 was allotted to the plaintiff. It is also admitted in the written statement that “the plaintiff incurred some

losses due to destruction of items kept in the stall". That apart as properly discussed in the judgment by the trial court, the fact that the stall was completely gutted by fire is admitted and that serious damage was caused to the motor bike is also admitted. The dispute is only with regard to the quantum. On the basis of the bills produced by the plaintiff only the assessment has been made to Rs.20,000/-. Yet another contention was that there was no permission to take the motor bike near the stall. The court below has rightly rejected the contention on the basis of evidence holding that there was nothing available on evidence to show that there was no permission to take the motor bike near the stall. Thus in the facts and circumstances of the case and on the basis of the available materials in evidence and also the evidence of PW4 and DW1 it cannot be said that the court below erred in awarding the damages to the tune of Rs.20,000/- for the items kept in the stall and to the tune of Rs.7,000/- for the damages caused to the motor bike.

5. As far as interest is concerned, there cannot be any dispute that under Section 34 of the Code of Civil Procedure a plaintiff is entitled to interest at reasonable rates from the date of the suit to the

date of the decree on the principal sum in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit with further interest not exceeding 6% per annum. The trial court granted interest at 12% with effect from 1-2-1989 solely on the basis of Ext.B8 resolution of the Corporation dated 31-1-1989. But it has to be appreciated that though the Corporation resolved to compensate the loss suffered by the stall owners, the implementation of the decision was subject to sanction from the Government. There is no case for the plaintiffs that despite sanction from the Government, the Corporation did not disburse the amounts. On the contrary the stand by the Corporation is that the Government refused to grant sanction. Therefore, the plaintiffs are not in any case entitled to interest with effect from 1-2-1989, the day following Ext.B8 resolution. Similarly the transaction admittedly being not commercial and the suits being only for damages, the plaintiffs are entitled only to 6% interest from the date of the judgment. Accordingly the decree and judgment in all these cases are modified in the matter of interest. The plaintiffs will be entitled to interest at the rate of 12% only from the date of institution

of the suit till the date of decree and thereafter at the rate of 6% till the date of deposit of the principal amount.

The appeals are partly allowed as indicated above. The parties will suffer their respective costs.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.

KURIAN JOSEPH &
K.T.SANKARAN, JJ.

A.S.Nos.491, 492, 494 &
497 of 1997

JUDGMENT

12th February, 2007